REMARKS

A. The Status of the Claims and the Amendments

Claims 1, 47, 49-51, and 55 are pending. By the present amendment, claims 1 and 49 have been amended to more particularly define the Applicant's invention and to claim it with greater specificity. As amended, the amended claims are supported by the specification and the original claims. No new matter have been added. It is submitted that the amendments place the claims in condition for allowance. Entry of the amendments is respectfully requested.

B. Rejection Under 35 U.S.C. § 102 (b)

Claims 1, 47, and 51 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 5,498,421 to Grinstaff et al. (page 3 of the Final Office Action). This rejection is respectfully traversed.

It is axiomatic that a valid rejection of a claim for anticipation by a reference requires that the reference explicitly or inherently describe all of the elements, limitations, and relationships recited in the claim. It is submitted that Grinstaff et al. do not describe all the elements and limitations recited in claim 1, as amended.

Grinstaff et al. disclose the use of polymeric shells encapsulating a biologic agent. The shells are made of a protein, such as albumin or hemoglobin (see, col. 9, lines 1-4; col. 25, lines 47-49). Grinstaff et al. fail to describe shells made of a lipid where the "lipid comprises at least one phosphatidic acid," as recited in claim 1, as amended. Accordingly, Grinstaff et al. fail to disclose every element of claim 1, as amended, and, therefore, is not a proper prior art reference under 35 U.S.C. § 102(b). Therefore, claim 1, as amended, is patentably distinguishable over Grinstaff et al. Each of claims 47 and 51 depends on claim 1 and is considered patentable for at least the same reason. Withdrawal of the rejection and reconsideration are respectfully requested.

C. Rejection Under 35 U.S.C. § 103(a)

Claims 1, 47, 49-51, and 55 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,261,537 to Klaveness et al (page 5 of the Final Office Action). This rejection is respectfully traversed on the following grounds.

It is axiomatic that a 35 U.S.C. § 103 rejection is based on a sub-section of 35 U.S.C. § 102. See, MPEP § 2141.01. In other words, to qualify as a valid 35 U.S.C. § 103 reference, the reference must also qualify as prior art under 35 U.S.C. § 102. See, *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1568, 1 USPQ2d 1593, 1597 (Fed. Cir. 1987). It is respectfully submitted that Klaveness et al. is not prior art vis-à-vis the present application, and thus does not qualify as a valid 35 U.S.C. § 103 reference.

Indeed, the Applicant respectfully points out that the present application claims the benefits of the provisional application USSN 60/046,379 and thus has the effective filing date of May 13, 1997. The Applicant has also noted that under 35 U.S.C. § 102(e), the earliest reference date to which Klaveness et al. is entitled is June 7, 1997, the filing date of each of provisional applications USSN 60/049,264, USSN 60/049,265, and USSN 60/049,268, to which Klaveness et al. claim priority.

Klaveness et al. also claim priority to seven British patent applications, the earliest of which has the filing date of October 28, 1996. However, the Applicant respectfully submits that for the purposes of the 35 U.S.C. § 103(a) rejection, Klaveness et al. are not entitled to the filing date of any foreign patent application to serve as the reference date. It is well established that filing dates of foreign applications to which a patent reference claims priority (whether under 35 U.S.C. § 119(a)-(d), (f) or under 35 U.S.C. § 365(a)) cannot be used to antedate the effective filing date of the application. See, MPEP § 2136.03.

In sum, the earliest reference date to which Klaveness et al. is entitled is June 7, 1997, which is after the effective filing date of the present application, that is, after May 13, 1997. Accordingly, Klaveness et al. is not a prior art against the present application and cannot be used for the obviousness rejection under 35 U.S.C. § 103(a). Withdrawal of the rejection and reconsideration are respectfully requested.

D. Double Patenting Rejection

Claims 1, 47, 49-51, and 55 have been rejected under the non-statutory, judicially created doctrine of obviousness-type double patenting over claims 1-102 of U.S. Patent No. 6,146,657, claims 111-173 of U.S. Patent No. 6,139,819, claim 95 of U.S. Patent No. 6,071,494, and claims 57-122 of U.S. Patent No. 6,414,139 (page 2 of the Final Office Action). While the Applicant respectfully traverses this rejection, it is believed that this issue has become moot in view of the terminal disclaimer which accompanies this response. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

CONCLUSION

In view of the above amendments and remarks, reconsideration and favorable action on all claims are respectfully requested. In the event any matters remain to be resolved, the Examiner is requested to contact the undersigned at the telephone number given below so that a prompt disposition of this application can be achieved.

A check to cover the RCE, the terminal disclaimer and one-month extension fees is enclosed. No other fee is deemed to be due in connection with this response. However, if any additional fee is due, the Commissioner is hereby authorized to charge any other fees associated with the filing submitted herewith, or credit any overpayments to Deposit Account No. 07-1896.

Respectfully submitted,

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